

**THE COALITION OF
VALUE ADDED RESELLERS**

December 23, 1998

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The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**Re: Bundling of CPE with Telecommunications Services: CC Docket Nos. 96-61,
98-183**

Dear Chairman Kennard:

As a Coalition of Value Added Resellers ("VARs"), we are writing to express our strong opposition to the Commission's proposal to permit telecommunications carriers to bundle customer premises equipment ("CPE") with their regulated transmission services.¹ Like many of the parties responding to this proposal, the VAR Coalition believes that bundling would permit carriers to require customers to purchase carrier-provided equipment and, as a result, limit consumer choice and reduce or even eliminate broad-based competition in the CPE market.²

As recognized by the Consumer Electronics Manufacturers Association and America Online, the Commission's No-Bundling Rule has been an unqualified success.³ The Rule prohibits carriers from requiring transmission service subscribers to use carrier-provided CPE and bars carriers from using transmission service revenue to cross-subsidize their CPE operations. By preventing carriers from engaging in conduct that would limit the ability of end-users to obtain CPE from independent providers – such as Value Added Resellers – the Rule has

¹ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, 1998 Biennial Regulatory Review – Review of Customer Premises Equipment and Enhanced Services Unbundling Rules in the Interexchange, Exchange Access and Local Exchange Markets*, FCC 98-258, CC Docket Nos. 96-61, 98-183, at ¶¶ 11-30 (rel. Oct. 9, 1998) ("Notice").

² See, e.g., *Comments of Nationwide Business Telephone systems, L.L.C. d/b/a/ Team Centrex* at 2-4 ("Team Centrex Comments"); *Comments of the Consumer Electronics Manufacturers Association* at 6, 7 ("CEMA Comments"); *Comments of America Online, Inc.* at 4 ("AOL Comments").

³ See *CEMA Comments* at 5; *AOL Comments* at 4.

enabled the development and growth of a truly competitive CPE market.⁴ In addition, by giving end-users the ability to choose the CPE that best suits their needs, the Rule has stimulated growth in related telecommunications services markets.

VARs purchase equipment from independent manufacturers. Working directly with end-users, VARs then assemble packages that combine equipment purchased from different manufacturers to provide customized solutions to their customers. Because most of these customers are small to medium-sized businesses, they lack the resources or expertise to assemble such packages themselves. For these users, VARs provide an important source of innovative choices.

If the Commission were to permit the bundling of CPE with regulated transmission services, the Coalition believes that many VARs would be forced out of business. As explained by Team Centrex, bundling would permit carriers to offer customers packages combining transmission service with deeply discounted CPE.⁵ A VAR simply could not compete with such cross-subsidized offerings. Indeed, a customer would be unlikely to seek out a VAR and pay for a "solution" that reflects the market price of competitively provided equipment, when the customer could obtain "free" equipment from the carrier. As a practical matter, the customer would have no choice but to accept the CPE chosen by its carrier, even if other equipment would better serve the customer's needs. Permitting carriers to dictate their customers' equipment choices in this manner plainly would be at odds with the overriding goals of the Telecommunications Act of 1996: to increase competition and to expand consumer choice.

CPE bundling in the data communications context creates a particularly significant risk of anticompetitive conduct for a number of reasons. First, carriers that provide bundled equipment in competition with VARs will serve as their customer's principal point of contact and thus have the incentive and ability to dictate their customer's CPE choices. By contrast, independent retailers that offer CPE produced by several competing manufacturers would be more likely to assemble packages that combine customer-selected CPE with transmission service. Second, equipment bundled by carriers will not be perceived by customers as a "commodity," but instead will be viewed as an integrated part of a customized service. Given this perception, carriers will be likely to stress that the combined service/CPE offering is superior to solutions that depend on CPE provided by separate vendors. Third, carriers, if allowed to bundle, would have both the ability and incentive to favor their own equipment.

⁴ See *NYNEX Tel. Cos., Tariff F.C.C. No. 1, Transmittal No. 127*, 9 FCC Rcd 1608, 1608 (1994) (observing that the Commission's pro-competitive CPE policies have led to improvements in CPE quality, lowered prices, enhanced performance of user's data networks, and created additional jobs); *Verilink Corporation's Petition for Rulemaking to Amend the Commission's Part 68 Rules to Authorize Regulated Carriers to Provide Certain Line Build Out Functionality as Part of Regulated Network Equipment on Customer Premises*, 10 FCC Rcd 8914, 8921 (1995).

⁵ See *Team Centrex Comments* at 2.

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In order to permit VARs to continue to provide increased choices to consumers and thereby maximize competition in the CPE market, the Coalition urges the Commission to retain the current No-Bundling Rule.

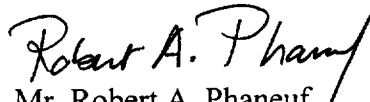
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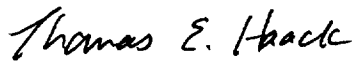
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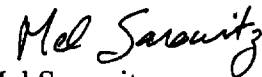
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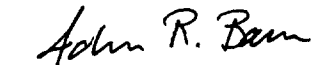
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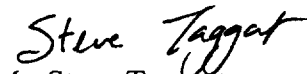
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